

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DAVID S. YARNALL,)
)
Plaintiff,)
)
v.) Civ. No. 05-527-SLR
)
CPL. ANTHONY MENDEZ, DELAWARE)
STATE POLICE - TROOP 7, and)
MILLSBORO POLICE DEPARTMENT,)
)
Defendants.)

ORDER

WHEREAS, plaintiff, David S. Yarnall, SBI # 548973 is a prisoner incarcerated at the Sussex Correctional Institution in Georgetown, Delaware, and on July 22, 2005, plaintiff filed a complaint under 42 U.S.C. § 1983;

WHEREAS, on August 10, 2005, this court granted plaintiff leave to proceed in forma pauperis (D.I. 6);

WHEREAS, on August 5, 2005, plaintiff filed a second motion to proceed in forma pauperis (D.I. 3);

WHEREAS, on August 5, 2005, plaintiff also filed a motion for appointment of counsel (D.I. 5);

THEREFORE, at Wilmington this 10th day of August, 2005, IT IS ORDERED that:

1. Plaintiff's second motion to proceed in forma pauperis is MOOT.
2. Plaintiff's motion for appointment of counsel is denied

without prejudice to renew. Plaintiff, a pro se litigant proceeding in forma pauperis, has no constitutional or statutory right to appointed counsel. See Ray v. Robinson, 640 F.2d 474, 477 (3d Cir. 1981). It is within this court's discretion, however, to seek representation by counsel for plaintiff, but this effort is made only "upon a showing of special circumstances indicating the likelihood of substantial prejudice to [plaintiff] resulting from [plaintiff's] probable inability without such assistance to present the facts and legal issues to the court in a complex but arguably meritorious case." Smith-Bey v. Petsock, 741 F.2d 22, 26 (3d Cir. 1984); accord Tabron v. Grace, 6 F.3d 147, 155 (3d Cir. 1993) (representation by counsel may be appropriate under certain circumstances, after a finding that a plaintiff's claim has arguable merit in fact and law). Having reviewed plaintiff's complaint, the court finds that his allegations are not of such a complex nature that representation by counsel is warranted at this time. The various papers and pleadings submitted by plaintiff reflect an ability to coherently present his arguments.

Sue L. Robinson
United States District Judge